IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2088 OF 1985

1. Shri Gulab Hasham Mulla
since deceased by heirs
1(a) Smt.Madinabi Gulab Mulla
and ors. .. Petitioners

Vs.

1. Smt. Ashrafbi Karim Mulla
since deceased by heirs
1-(1) Unus @ Enayatulla Karim Mulla
since deceased by heirs
1(1)(a) Smt. Hanifa Unus Mulla
and ors. .. Respondents

Shri A.R. Shaikh for petitioners.
Smt. Anjali Helekar for respondent nos.1(1)(a) to 1(1)(h).
Mr. B.M. Shaikh for respondent nos.3(1) to 3(7) absent.

CORAM: B.H. MARLAPALLE, J.

Date : June 27, 2006.

ORAL JUDGMENT:

1. This petition deals with the tenancy rights under the Bombay Tenancy and Agricultural Lands Act, 1948 (the Tenancy Act for short) in respect of the agricultural land located in Survey No.17 of village Shirala and admeasuring 7 acres 5 gunthas. This land

was a Mirashi Inam Land and Shri Krishna Babaji Sawant, the father of the present respondent no.2 was the original Mirashdar/Watandar. However, the Mirashdar was not cultivating the land and the same was being cultivated by two persons, namely, (i) Ismail Ahmed Mulani and (ii) Hasham Hussain Mulani with equal share under independent cultivation. The petitioner is the son of Hasham and on the demise of Ismail Ahmed Mulani the names of his two sons i.e. Karim Ismail Mulani and Hussain Ahmed Mulani were brought on record. In due course the wife of Karim, the present original respondent no.1 Smt. Ashrafbi purchased the share of her brother-in-law on 11/11/1960 and thus the present petitioner and the LRs of Karim became the tenants with half share each in the suit land. As on the tillers' day i.e. 1/4/1957 Gulab was cultivating half of the land as the LR of Hasham and the remaining half of the land which was in possession of Ismail Ahmed initially was also being cultivated by Gulab as sub-tenant. Thus, Gulab had a dual relationship i.e. in respect of 50% of the land he was a tenant qua the Mirashdar and on the balance he was a sub-tenant qua the tenant i.e. Karim or his LRs.

2. It appears that in respect of half of the land under the lease of Karim which was being cultivated by Hasham and subsequently by the present petitioner, proceedings under Section 32G of the Tenancy Act were initiated and the purchase price was fixed on 4/11/1962. The respondent no.1 challenged the said order by filing Tenancy Appeal which was allowed on 10/6/1963 and the 32G proceedings were remanded for retrial by the ALT, Shirala. In the fresh inquiry, the ALT framed following issues:-

(a) Whether Shri Karim Ismail Mulla, the husband of Landlady whose whereabouts were not known for the last 10-12 years is presumed to be dead?

(b) If so, whether the landlady is a widow on or before 1/4/1957? and

(c) Whether she is entitled to get the benefit of Section 32F(1)(a) of the Tenancy Act?

(d) Whether Shri Gulab Hasham Mulla, the alleged tenant is lawfully cultivating the land of the landlady as a tenant?

(e) If so, whether he is entitled to purchase the suit land under Section 32G of the Tenancy Act?

. After hearing both the parties and by considering the evidence placed on record, the ALT answered the first three issues in the affirmative and the last two issues framed in respect of the petitioner's rights were answered in the negative vide the Judgment and Order dated 31/3/1965. This order was challenged in Tenancy Appeal No.113 of 1965 and the District Deputy Collector, Walwa Division, Sangli allowed the said appeal vide his Judgment and Order dated 17/2/1967. He set aside the ALT's order and directed the case for de novo inquiry in the light of the observations made by him in the said order. Ashrafbi, therefore, challenged the appellate order dated 17/2/1967 before the Maharashtra Revenue Tribunal in Revision Application No.153 of 1967 and the revision was allowed by modifying the order passed

by the District Deputy Collector. The Revenue Tribunal remanded the inquiry in respect of half of the land held by the petitioner directly from the Mirashdar to fix the purchase price and in respect of the remaining half of the land claimed by the petitioner through Ashrafbi, the proceedings were directed to be dropped. This order of the Revenue Tribunal is the subject matter of challenge in this petition and the same challenge is required to be considered under the supervisory powers under Article 227 of the Constitution.

3. Though R & P was not called in this case, the 7 x 12 extracts right from the year 1948-49 and the details of the mutation entries effected right from 1941 onwards in respect of the subject land are placed on record. The Revenue Tribunal held that Ashrafbi being a widow, the tillers' day would be shifted and the cultivator could not exercise his right to purchase the half share on which he was a sub-tenant in view of the provisions of Section 32F(1) of the Tenancy Act. As per the Revenue Tribunal the petitioner's right to purchase the land would be postponed in view of the provisions of Section 32F of

the Tenancy Act and, therefore, the inquiry was directed to be dropped.

4. The learned counsel for the petitioner by referring to the record submitted that Ashrafbi could not be treated to be a landlady and her status at the most was as a tenant within the meaning of Section 2(18) of the Tenancy Act in respect of half of the suit land and on the said land the petitioner was a sub-tenant cultivated all along and even as on 1/4/1957. Her disability as a widow could not postpone the right of the petitioner to purchase the land cultivated by him as a sub-tenant. He, therefore, refers to the order passed by the District Deputy Collector on 17/2/1967 while allowing Tenancy Appeal No.113 of 1965 wherein it was held that the Watandar being a superior holder the Mirashi/tenant could not be said to be the landlord. It was also pointed out that the presumption drawn by the Revenue Tribunal regarding the demise of Karim, the husband of Ashrafbi, does not have legal support more so because she only alleged that her husband was missing for last 7-8 years as is noted in the order dated 17/2/1967 passed by the District Deputy Collector, Walwa

Division in Sangli District. Such a statement was not sufficient to draw a presumption that Karim would be deemed to be dead as he was missing for 7-8 years. Thus, the petitioner also challenges the status of Ashrafbi as a widow at the relevant point of time. We need not go into the second controversy and the petitioner succeeds on the first ground itself.

5. As noted earlier, the petitioner's right on the subject land is in dual capacity, namely, on half of the land he is a tenant-Mirashi directly through the Watandar and on the remaining half of the land he is claiming sub-tenancy through the original tenant Karim. He, therefore, claimed his right to purchase the entire land under two different provisions. So far as the land he cultivated as a tenant, he sought to exercise his right to purchase the land under Section 32G whereas in respect of remaining half of the land which was under his cultivation as a sub-tenant he claimed his right to purchase under Section 32I of the Tenancy Act. The record clearly shows that the petitioner's father Hasham was the tenant on half of the land along with Ismail Ahmed through the original Watandar and it is not in dispute

that as on the tillers' day i.e. 1/4/1957 the entire land was being cultivated by him. His right under Section 32G of the Tenancy Act to purchase half of the land under his cultivation as a tenant through the superior holder could not be challenged by Ashrafbi and the Revenue Tribunal has rightly upheld this issue and, therefore, directed the Lower Court to determine the purchase price. The issue in this petition that requires consideration is regarding the remaining half share which was under the direct cultivation of Karim as a tenant and subsequently with the petitioner as a sub-tenant.

. Section 2(18) defines the term "tenant", which means a person who holds land on lease and include,- (a) a person who is deemed to be a tenant under section 4; (b) a person who is a protected tenant; and (c) a person who is a permanent tenant; and the word "landlord" shall be construed accordingly.

6. Section 32I of the tenancy act deals with the right of the sub-tenant of permanent tenant to purchase the land under his cultivation. The said section reads as under:-

32I. Sub-tenant of permanent tenant to be deemed to have purchase land. - (1) Where a permanent tenant has sub-let the land held by him the sub-tenant shall, to the extent and subject to the conditions specified in section 32 to 32E (both inclusive), be deemed to have purchase the land on the Tillers' day.

(2) The purchase price thereof shall be determined in the manner provided in clause (ii) of sub-section (1) of section 32H.

(3) Out of the purchase price payable by such sub-tenant the amount equal to six times the rent shall, in lump sum, be payable to the owner and the balance shall be paid to the permanent tenant.

(4) The provisions of section 32 to 32H (both inclusive) and section 32J to 32R (both inclusive) in so far as they may be applicable, shall apply to the purchase of the land by such sub-tenant and the payment to be

made, to and on behalf of the permanent tenant.

. Sub-section (1) clearly gives the sub-tenant the right to be recognized as a statutory purchaser of the land on the tillers' day. As per sub-section (2) the purchase price thereof shall be determined in the manner provided in clause (ii) of sub-section (1) of section 32H and as per sub-section (3) out of the purchase price payable by such sub-tenant, the amount equal to six times the rent shall, in lump sum, be payable to the owner and the balance shall be paid to the permanent tenant. Thus, there is a distinction between the status of the owner/landlord on one hand and the permanent tenant on the other hand. The law does not envisage that a tenant became a landlord though the term "tenant" includes a sub-tenant.

7. The Tribunal fell in manifest error in taking support of the provisions of Section 32F(1)(a) of the Tenancy Act, which reads as under:-

32F. Right of tenant to purchase where landlord is minor, etc.- (1) Notwithstanding

anything contained in the preceding sections,--

(a) where the landlord is minor, or a widow, or a person subject to any mental or physical disability the tenant shall have the right to purchase such land under Section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31 and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31.

. Provided that where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in this sub-section unless before the 31st day of March, 1958 the share of such person in the

> joint family has been separated by metes and bounds and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion.

. This provision is applicable to the landlord or the landlady and not to a tenant in as much as a tenant in whatever form cannot walk in the shoes of the landlord. There is another aspect which the Revenue Tribunal failed to consider that on enactment of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950 the Inam in respect of the suit land was abolished and the suit land was resumed by the Government. Mutation Entry No.3564 effected on 30/7/1952 clearly states that under the orders of the Collector, Sangli the suit land was resumed by the State Government by exercising the powers under Section 3(3) of the Bombay Paragana and Kulkarni Watans (Abolition) Act, 1950. The said land was re-granted to the original Watandar sometimes in 1955

and thus, the right to purchase the land accrued to the tiller i.e. the present petitioner and, therefore, the petitioner's father rightly instituted the proceedings under Section 32G of the Tenancy Act. It cannot be accepted that Ashrafbi would be a landlady within the meaning of Section 32F(1)(a) of the Tenancy Act and, therefore, the petitioner's right to purchase her share would be postponed. The District Deputy Collector was right in his observations that Ashrafbi could not be called as the landlady and, in fact, through her husband she continued to be the tenant with the petitioner as her sub-tenant. There is no reason to close the proceedings in respect of Ashrafbi's share of 50% of the suit land to decide the petitioner's right to purchase it. The Revenue Tribunal fell in gross errors in closing the inquiry to this extent and thus defeated the provisions of Section 32I of the Tenancy Act.

8. The learned counsel for the respondent-tenant submitted that the impugned order was passed by the Maharashtra Revenue Tribunal on 30/8/1968 and this

petition came to be filed on 15/3/1985 and, therefore, it was hit by inordinate delays and that was a sufficient ground to dismiss the petition. The Farad shows that the petition was admitted on 26/7/1985 and the issue of limitation or delay in approaching this court was not left open. Even otherwise, the impugned order dated 30/8/1968 was not acted upon till the petition is filed, in as much as the petitioner-subtenant continued to be in possession and cultivation of the half share held by Karim as the tenant of the original Watandar. We must also note that the Tenancy Act is an agrarian reforms law and it was enacted to protect the interest of the tillers and to bestow upon him the statutory ownership rights in respect of the agricultural land he was cultivating on the tillers' day i.e. 1/4/1957. Obviously, these are the reasons which appeared to have weighed with this court while admitting the petition and not leaving the issue of delay open for arguments. Equally important is the fact that at no point of time an affidavit in reply has been filed opposing the petition on the ground of delay during last about more than 21 years. Hence the contentions of the learned counsel for the respondent-tenant on the point of delay are hereby

rejected.

9. In the premises, this petition succeeds and same is hereby allowed by quashing and setting aside the impugned order passed by the Maharashtra Revenue Tribunal. It is directed that the purchase price in respect of half of the suit land which was held by the petitioner as a direct tenant shall be decided, if not already done, within a period of three months from today and certificate under Section 32M of the said Act shall be issued in favour of the petitioner thereafter without any delay. The petitioner's proceedings under Section 32I of the Tenancy Act in respect of the land on which he was a sub-tenant in half of the share under the tenancy of Karim will be conducted de novo by the ALT and the said inquiry shall be completed as per law and as expeditiously as possible and in any case within a period of three months from 1/7/2006. The application of the petitioner in that regard shall be governed by the provisions of Section 32I and not 32F(1)(a) of the Tenancy Act.

10. Rule is made absolute in terms of the above directions but without any order as to costs.

(B.H. Marlapalle,J.)